

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

IN RE UNION PACIFIC RAILROAD	)	MDL No. 1597
EMPLOYMENT PRACTICES LITIGATION	)	Case No. 8:03-CV-437
_____	)	

**ORDER APPROVING STIPULATION REGARDING CLASS CLAIMS,  
INJUNCTION, AND ATTORNEYS' FEES**

After granting partial summary judgment, this Court scheduled a status conference to consider the remaining issues of notice to the class, claims, injunctive relief, and attorneys' fees. The Court is advised that as to these limited issues, the parties have agreed to a proposed class process, an order for injunctive relief, and a process for either agreeing to or determining the amount of attorneys' fees and expenses.

IT IS THEREFORE ORDERED by the Court as follows:

The parties' Stipulation (Filing No. 243) is approved as follows:

1. Claim Form: The Claim Form attached hereto and identified as Exhibit A is approved as to form.
2. Claim Procedure: Union Pacific Railroad is hereby ordered to reimburse its female Agreement employees who are class members for the costs of FDA-approved prescription contraceptives pursuant to the claims procedures as agreed upon by counsel or as ordered by the Court. Defendant has access to the last known address for the approximate 2500 female Agreement employees ("class members"). By December 31, 2005 or within thirty (30) days of the issuance of the mandate by the Court of Appeals in the event an appeal is filed, whichever is later, Defendant will send the Claim Form, via First Class Mail, to each Class Member with Defendant's return address. If any of the First Class Mail is returned from any Class Member, Defendant shall then make reasonably

diligent efforts to locate the Class Member and, using all information in its possession, custody, or control, re-send the Claim Form to that Class Member. A list of all Class Members who cannot be contacted in this manner, with their last known addresses, shall be filed with the Court within 45 days of the initial mailing of the Claim Form. The cost and expense of mailing Claim Forms shall be borne by Defendant. Completed Claim Forms shall be sent to Plaintiffs' Class Counsel at a separate P.O. Box number so as to keep the claims separate from regular mail to Plaintiffs' Class Counsel. Plaintiffs' Class Counsel shall keep a spreadsheet of claims indicating which option is chosen with supporting documents. Plaintiffs' Class Counsel will correspond with class members choosing actual reimbursement who do not present adequate backup documentation. Ninety (90) days after the Claim Forms are initially mailed to the class members, Plaintiffs' Class Counsel will provide a copy of the spreadsheet and copies of all of the Claim Forms with documents attached to defense counsel. Defense counsel shall have thirty (30) calendar days in which to review the spreadsheet and Claim Forms. Defense counsel shall thereafter consult with Plaintiffs' Class Counsel, and within fifteen (15) days either reach an agreed Disbursement Order for the Court to approve or file a motion with the Court advising of any dispute, and Plaintiff's counsel shall then file a response brief within ten (10) days. In the event that more than 25% of Class Members age 50 or over as of February 9, 2001, return signed claim forms selecting the option for reimbursement without proof of purchase, Defendant may seek Court approval to require additional proof from these Class Members. Defendant may discharge its responsibilities in this paragraph by designating a third party to perform those responsibilities, provided that Defendant shall remain responsible for ensuring compliance with the terms of this Order. Members of the class shall be limited

to the backpay remedies pursuant to the claims procedures contained in this Order. Any class member who fails to return a signed and completed claim form in a timely manner will be barred from pursuing any claims against Union Pacific, its officers, employees, health care benefit plans, shareholders, and directors other demands relating to or arising from the lack of coverage of prescription contraceptives by Union Pacific's agreement health care plans from February 9, 2001 to the present.

3. Injunction. Union Pacific Railroad Company is hereby Ordered to provide prescription contraceptive benefits coverage for its female Agreement employees on an equal basis and the same terms and conditions with other prescription benefits for male Agreement employees, such that health plan benefits for FDA-approved prescription contraceptives are the same as health plan benefits for other prescription drugs and devices.

4. Attorneys' Fees: As the prevailing parties in this action, Plaintiffs shall be entitled to recover their fair and reasonable attorneys' fees and expenses. If the parties can agree to an amount of fees and expenses, they shall submit a stipulation for the Court's consideration no later than October 19, 2005. If the parties cannot agree to an amount of fees and expenses, Plaintiffs shall file a fee and expense application on or before October 28, 2005, with Defendant responding by November 28, 2005, and Plaintiffs' Reply filed by December 14, 2005.

5. Incentive Awards: For the cost and time spent serving as class representatives against their employer, Brandi Standridge and Kenya Phillips, who created substantial benefits to the Class, are awarded \$5,500 each from and against Union Pacific.

6. Stay and Supersedeas Bond: The Claim Procedure, Injunction, Attorneys' Fee award (as yet undetermined), and Incentive Awards are hereby stayed pending appeal by Union Pacific or until December 31, 2005, whichever is later. The time for appeal shall run from the date of entry of a final order on attorneys' fees. In the event of an appeal, Union Pacific shall promptly file a supersedeas bond in the amount of \$5.2 million to cover the potential cost of Claims to date of approximately \$2 million, the potential additional cost of Claims from now to the mandate of the appellate courts of approximately \$2 million, the estimated cost of attorneys' fees and expenses to date of \$1 million, the estimated cost of attorneys' fees and expenses to be incurred on appeal and during the subsequent Claims process of \$200,000, and the cost of incentive awards of \$11,000. Upon filing of a supersedeas bond, this Order shall be stayed, pursuant to Rule 62(d), until issuance of the mandate by the Court of Appeals.

Dated this 17<sup>th</sup> day of October, 2005.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge

**Exhibit A**

**PRESCRIPTION CONTRACEPTIVES CLAIM FORM FOR FORMER OR  
CURRENT FEMALE AGREEMENT EMPLOYEES OF UNION PACIFIC**

***Why Am I Receiving This Claim Form?***

On March 31, 2005, the U.S. District Court for the District of Nebraska ("Court") certified a class action consisting of "All females employed by Union Pacific Railroad Company after February 9, 2001, enrolled in one of the Agreement Plans who used prescription contraception, at least in part for the purpose of preventing pregnancy, without insurance reimbursement from said Plan." You are receiving this Notice because you may be a member of this Class. The Court also held that Union Pacific is required to cover prescription contraceptives under its Agreement Plans. As a result, if you are a member of the Class, you may be entitled to reimbursement for your prescription contraceptive costs from February 9, 2001 until the present if you fill out and return the attached affidavit as set forth below. If you do not return this affidavit, your rights to be reimbursed for the cost of prescription contraception by Union Pacific will be released and you will not be able to recover such damages.

***How Can I Make a Claim?***

By filling out and mailing the enclosed Claim Form Affidavit, postmarked on or before **NOVEMBER 18, 2005**. You have two choices:

1. Reimbursement of Actual Costs: Sign and return the Claim Form Affidavit and you will be reimbursed for your actual expenditures for prescription contraception incurred after February 9, 2001 **if and only if** you provide copies of your pharmacy billing statements signed by a pharmacist, or your billing records from your health care provider.
2. Reimbursed \$200: Sign and return the Claim Form Affidavit. You do not have to provide proof of purchase.

PLEASE READ THIS FORM AND THE ATTACHED AFFIDAVIT CAREFULLY BEFORE SIGNING. BY SUBMITTING A CLAIM, YOU ARE AFFIRMING UNDER OATH THAT THE FACTS OF YOUR CLAIM ARE TRUE AND CORRECT.

**Mail Your Completed Form  
With Enclosed Records  
(if any) to:**

**The Claims Administrator  
P.O. Box \_\_\_\_\_  
Seattle, WA \_\_\_\_\_**

Name \_\_\_\_\_  
Address \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_  
Dates of Employment with Union Pacific: \_\_\_\_\_  
Union Affiliation: \_\_\_\_\_

**If any of the information on this label is incorrect, please correct it in ink.**

**CLAIM FORM AFFIDAVIT**

1. I was an employee of Union Pacific during the period indicated above. During that period, I was enrolled in one or more health care plan(s) for union employees.

2. While I was employed at Union Pacific and enrolled in one of its health care plans for union employees, I purchased some form of prescription contraception used at least in part for the purpose of preventing pregnancy (*i.e.* not exclusively for some non-contraceptive purpose such as skin problems or menstrual cramps). Union Pacific health plans did not pay for the cost of these prescription contraceptives.

3. I understand that prescription contraceptives do not include non-prescription contraceptives such as sponges, condoms, spermicidal foam or film, or other over-the-counter contraceptive products.

4. I wish to be reimbursed in one of the two ways identified below (check one):

\_\_\_\_\_ \$200, regardless of my actual expenses for prescription contraceptives during my period of employment with Union Pacific. I understand that I do not need to provide any proof of expenditure.

**OR**

\_\_\_\_\_ For the actual cost of prescription contraception. I understand that I must provide copies of my pharmacy billing statements, signed by a pharmacist, or my billing statement on my prescribing health care provider's letterhead, which are enclosed with this Claim Form.

5. I hereby release Union Pacific and its officers, employees, health care benefit plans, shareholders, and directors from all claims, actions, damages, and other demands relating to or arising from the lack of coverage of prescription contraceptives by Union Pacific's union agreement health care plans after February 9, 2001 to the present.

Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury that the foregoing is true and correct.

\_\_\_\_\_  
Signature of Claimant

Date: \_\_\_\_\_

Phone Number: \_\_\_\_\_

**All materials submitted with your claim will be confidential.**